

Minutes of the Board of Adjustment meeting held on Monday, October 13, 2008, at 5:30 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present: Rosi Haidenthaller, Chair
Joyce McStotts, Vice-Chair
Wendell Coombs, Jr.
Tim Tingey, Community & Economic Development Director
Ray Christensen, Senior Planner
Chad Wilkinson, Community Development Planner
G.L. Critchfield, Deputy City Attorney
Citizens

Excused: Jonathan Russell
Connie Howard

There was a Pre-Meeting held where the Board of Adjustment members briefly reviewed the applications. An audio recording is available for review in the Community & Economic Development office.

APPROVAL OF MINUTES

Rosi Haidenthaller asked for additions or corrections to the minutes of July 14 and August 11, 2008. Joyce McStotts made a motion to approve the minutes as submitted Wendell Coombs seconded the motion.

Voice vote was taken. Minutes approved 3-0.

Rosi Haidenthaller explained that variance requests are reviewed on their own merit and must be based on some type of hardship or unusual circumstance for the property and that financial issues are not considered a hardship.

CASE #1364 - SHANE JAKEMAN - 602 East 4800 South

Shane Jakeman was present to represent this request. Chad Wilkinson reviewed the location and request for a variance to the required lot area for a flag lot in an R-1-8 zone. The variance has been submitted in anticipation of an application for a flag lot subdivision located at 602 East 4800 South. The applicant has recently revised their plans and request for a minimum lot area on the flag (rear) lot. The Code requires a minimum of 1.25 times the minimum lot area required for the zone district for flag lots. Using this calculation, flag lots in an R-1-8 zone require a minimum of 10,000 square feet. The proposed lot is 9,497 square feet in area resulting in a variance of 503 square feet or approximately five percent of area required by Code. The subject property consists of lots 10 and 11 of the Bradford Subdivision. It appears that these lots were combined at some point in the past creating one large lot. Additionally, it appears that at some point an adjustment occurred between the subject property and the property to the west due to the construction of a garage and fence. The existing fence line follows this apparent adjustment in property lines. The area now a part of the adjoining lot appears to be large enough to provide the area needed to meet the standards of the Code. The applicant has indicated that the home is on the Murray Historic Register and indicates a desire not to tear down the existing building. The general purpose of the flag lot standards is to allow for further divisions in single family residential zones in order to provide for efficient use of land. It appears that the current configuration has resulted from the action of a previous property owner and an adjacent property owner, and that the literal enforcement of the ordinance would

not carry out the general purpose of the land use ordinance. This lot is unusual in shape based on a curved west property line. It appears that the size of the property has been impacted by the construction of a garage and fence on the adjoining property to the west. The resulting adjustment to the west side of the property takes up some of the area that originally was part of the subject property. The lot size resulting from approval of the variance is compatible to lot sizes in the vicinity and will not create negative impacts to the neighboring properties. Based on the review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal Code sections, Community & Economic Development staff find that the proposal meets the standards for a variance and recommends approval of the variance to the minimum lot area for a flag lot.

Shane Jakeman, 507 East 4800 South, stated he is attempting to develop this flag lot in order to construct a residential dwelling for himself.

No comments were made by the public.

Joyce McStotts made a motion to approve the variance as requested based on the information submitted and staff analysis and there appears to be a hardship associated with the property per the review. Seconded by Wendell Coombs.

Call vote recorded by Ray Christensen.

A Mr. Coombs
A Ms. Haidenthaller
A Ms. McStotts

Motion passed 3-0.

CASE #1365 - BRYANT WONNACOTT - 1482 East Greenfield Avenue

Bryant Wonnacott was the applicant present to represent this request. Ray Christensen reviewed the location and request for side yard setback variances in order to construct an addition onto the side of the dwelling at the property addressed 1482 East Greenfield Avenue located within the R-1-8 zone. Murray City Code Section 17.100.080 B indicates the minimum depth of one of the side yards of a residential dwelling is eight feet and the total width of the two required side yards shall be not less than twenty (20) feet. The applicant is requesting a 15.74 foot total side yard setback with a 4.26 foot variance for the two side yards, and a minimum of 7.5 feet side yard with a .5 foot variance on one of the side yards. The zoning regulations require a minimum of 20 feet total side yards and a minimum of 8 feet side yard on one side. The applicant is going through an administrative process for a property boundary adjustment with the property to the west of this lot. The applicant indicated they will own the additional land by the time of the Board of Adjustment meeting. The planning staff will require a copy of the recorded document to verify that the additional property has been recorded as part of the this lot. There are special circumstances attached to this property. With review of the standard lot sizes in this area, it shows most of the properties are rectangular in shape; whereas this lot has a wedge shape. This property is wider on the front and narrows from north to south. The setback location at the south west corner of the house is narrower than the north west corner of the house due to the shape of the lot. The variance request relates mainly to the south west corner of the building. Based on review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal Code sections, the Community and

Economic Development Department staff finds that the proposal meets the standards for a variance and therefore recommends approval of the variance subject to combining and recording of the additional property to be combined with this lot as one property with one tax parcel number.

Rosi Haidenthaller clarified that Bryant Wonnacott has a warranty deed granting him the adjacent strip of property.

Bryant Wonnacott, 1482 East Greenfield Avenue, stated the neighbors home to the east is setback approximately 7 feet and the neighbors to the west have approximately a 20 foot setback. Mr. Wonnacott explained that his parents used to own this home and are currently the owners of the adjacent strip of property.

No comments were made by the public.

Mr. Coombs stated that there is a uniqueness to this property as indicated in the staff analysis. He stated that the Wonnacott's have attempted to mitigate the uniqueness with this property by purchasing the adjacent strip of property and the shape of the lot is unique because it does narrow considerably towards to the back of the lot. Wendell Coombs made a motion to grant the variance as requested based on the staff analysis and recommendation and information submitted. Seconded by Joyce McStotts.

Call vote recorded by Ray Christensen.

<u>A</u>	Mr. Coombs
<u>A</u>	Ms. Haidenthaller
<u>A</u>	Ms. McStotts

Motion passed 3-0.

CASE #1366 - FUIZA MOTORS - 4885 South 300 West

Renato Fiuza was present to represent this request. Chad Wilkinson reviewed the location and request for a variance to the minimum required landscape depth of ten feet along a street frontage in the M-G-C zone for the property addressed 4885 South 300 West. Murray City Code Section 17.152.100 A, indicates ten feet of landscaping shall be required along all frontage areas not occupied by drive accesses. Section 17.68.030 indicates that landscaping and related improvements required by the Code shall be installed in conjunction with uses that require the issuance of a conditional use permit. The property received approval for a conditional use permit for auto sales from the Murray Planning Commission on September 4, 2008. The plans submitted by the applicant in support of the conditional use permit application indicated that the landscaping along 300 West would be widened to 10 feet depth as required by Code. The property currently has a six-foot wide landscape area along 300 West. The full 10 foot depth of landscaping is provided along Fifth Avenue. Providing landscaping in accordance with the Code would entail the removal of approximately four feet of asphalt and concrete curb for the length of the property on 300 West (approximately 88 feet). The applicant has subsequently requested that a variance be granted to allow the existing six-foot landscape area to remain without the additional four-foot depth required by the Code. Analysis of the site plan submitted with the application for conditional use permit demonstrated that parking and landscaping would meet the requirements of the Code could be provided on site while still maintaining minimum maneuvering space. The property is similar in size and area to other lots

in the general area. The property is not odd shaped and meets the other standards of the Code to lot width, building setback, and building height. Analysis of the site plan submitted with the conditional use permit indicated adequate space on site to provide parking and landscaping meeting Code requirements. Section 17.68.010 states that the purpose of the landscape requirements is to improve the appearance of the yard areas including areas used for parking and open lot sales. Additionally, the section indicates that the purpose of landscape standards are to protect the character and value of surrounding neighborhoods thereby promoting the general welfare. A variance in this instance would be contrary to the public interest. The land use ordinance requires that landscaping be brought into compliance with the Code at the time of conditional use permit approval. Provision of landscaping in accordance with code requirements is possible while still maintaining adequate room for parking and maneuvering on the site. The variance would therefore not be in keeping with the spirit of the land use ordinance. Based on review and analysis of the application material, subject site and surrounding areas, and applicable Murray Municipal Code sections, the Community and Economic Development staff finds that the proposal does not meet the standards for a variance.

Renato Fiuza, 4885 South 300 West, indicated that they did not realize that need for the additional parking of vehicles on this property and that the additional 4 feet of landscaping would limit the parking and make it more difficult to maneuver vehicles on the southwest portion of the property.

Rosi Haidenthaller stated that the planning department has indicated that there is sufficient space to maneuver vehicles with the installation of the landscaping. Mr. Fiuza explained that a minimum of one, possibly two, parking spaces would be eliminated if he is required to install the landscaping because of the tightness of the turn.

Chris Purdum, 4674 South Brown Street, indicated he is the owner of Customs & Classics business. Mr. Purdum stated that Mr. Fiuza has done a good job working within the confines of the property which is a small space. He stated he supports granting of the variance, and it would be detrimental for Mr. Fiuza to have to meet the requirements.

Mr. Wilkinson indicated that this property will be having some changes in order to meet the city's code such as revising the parking configuration. He stated that there is a minimum number of parking stalls and dimensions required per code.

Mr. Coombs stated that the plans indicate the 10 foot landscaping along the west boundary. He asked how much aisle space is there based on the current configuration between parking spaces on the west. Mr. Wilkinson responded that a couple of parking stalls would need to be eliminated in order to meet the property landscaping, parking widths and aisle widths, but that there is adequate space on the site to have parking spaces in other locations to meet the code.

Rosi Haidenthaller stated that when the use of a property occurs, the city's desire is to have the property then be brought up to meet current code. Many of these properties were developed many years ago prior to the current landscaping requirements.

Renato Fiuza stated that the owner of the property indicated that this property was approved for an office use and does not need a conditional use permit for auto sales, and therefore puts Mr. Fiuza in somewhat of a dilemma. Mr. Wilkinson responded that issue requires that when someone makes application for a conditional use permit, that the property be brought up to the standards of the code. Mr. Wilkinson explained that conceivably, if there was a permitted use in

the zone and based on the previous use, the property may not have to be brought into code, i.e. continuation of a nonconforming use.

Mr. Fiuza explained that there was a previous business of cosmetic sales at this property that were not required to install the landscaping.

Mr. McStotts questioned that the cosmetic sales was a permitted use for this property and did not have to improve the property. Mr. Wilkinson responded that the staff did not spend a lot of time researching the previous use of the property and either the use was an allowed use and was a nonconforming use or was a use that could continue to operate. He explained that because this is now a change of use, it requires the property to be brought into code.

Mr. Coombs stated that to prove a hardship, the applicant must meet all five criteria of the standards as outlined. He stated he does not see a proof of meeting the five criteria for this application as displayed by the applicant. Ms. McStotts concurred. She expressed concern with this business leasing the property and may change in the future and the variance remains with the property and not the property owner or lessee. If the variance were to be granted, the property would never be brought into conformance and that is the purpose the ordinances, to bring properties into conformance when applicable and at this point, it is applicable.

Wendell Coombs made a motion to deny the variance based on the recommendations of staff that the applicant did not meet the definitions of a hardship as provided by the current law. Seconded by Joyce McStotts.

Call vote recorded by Ray Christensen.

<u> A </u>	Mr. Coombs
<u> A </u>	Ms. Haidenthaller
<u> A </u>	Ms. McStotts

Motion passed 3-0.

CASE #1367 - BMW OF MURRAY - 4760, 4762 & 4764 South Brown Street

Rod Coles and Dave Clark were present to represent this request. Ray Christensen reviewed the location and request for a variance to not install a solid masonry buffer wall adjoining a residential zone. The properties are located within the C-D-C zone and also within the Downtown Historical Overlay District (DHOD). The applicant is requesting to not install a 6 foot high solid masonry wall adjoining a residential zone boundary to the east. The applicant is proposing to install a vinyl fence. Murray City Code Section 17.160.110 identifies where a site abuts a residential zone, a six foot high solid masonry wall shall be located along the property line and be in conformance with the city fencing ordinance. The Planning Commission recommended installation of a vinyl fence at the October 4, 2007 meeting, but was not aware of the ordinance requirements for a solid masonry wall adjoining the residential zone. There does not appear to be any special circumstances attached to this property that would not apply to other properties and businesses in the district. The variance would not meet the spirit of the land use ordinance with regard to installing a buffer wall adjoining the residential zone. Based on review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal Code sections, the Community and Economic Development staff finds that the proposal does not meet the standards for a variance.

Rosi Haidenthaller asked for clarification of the fence location. Mr. Christensen responded the fence in question is located along the frontage on the west side of Brown Street which would be located behind a 10 foot depth of landscaping.

Mr. Coombs asked about fencing regulations. Mr. Christensen explained that with a 10 foot setback behind landscaping, the fence may be a height of 6 feet for commercial uses on interior lots.

Dave Clark, 4735 South State Street, stated he was surprised to hear that they needed to apply for a variance since the Planning Commission suggested the vinyl fence at the meeting on October 4, 2007, and at that time the fence was installed. He stated he did not particularly care whether he was required to install a solid masonry wall or a vinyl fence, but it was the residents who requested the vinyl fence and not himself. He stated that Larry Miller was approved for a similar situation wherein he was allowed to install a vinyl fence on Hanauer Street for a length of 450 feet, and this request is for a length of 200 feet. He stated that graffiti removal is much more difficult on masonry walls than vinyl walls and that is where it becomes costly. Mr. Clark stated that the commission members are the ones who made the mistake by insinuating that the vinyl fence could be installed and now he has had to apply for a variance and pay the associated fee.

Chris Purdum, 4674 South Brown Street and 111 East Rainbow Drive, stated that he is the owner of the Customs & Classics business. He asked that the city be consistent with the requirements and there was a lot of confusion when he built his business at 111 East Rainbow Drive. He stated Brown Street does border residential zoning on the east side. He stated that 111 East Rainbow borders commercial development which has a home. At that time he proposed to have a masonry wall, but was denied because it borders commercial zoning and subsequently installed a wrought iron fence. He asked why trees were not required at the original approval for this development because that is a big deal in Murray City.

Dave Clark stated if he hadn't been trying to buy another piece of property, they would try to work out a situation where they didn't have to drive on Brown Street and this would have done earlier in the spring. He stated that the commission granted their authority for the fence and they have met all their requirements.

Wendell Coombs stated the variance granted for Larry Miller on Hanauer Street is somewhat different because Hanauer Street is a dead end street and this location is a through street.

Rosi Haidenthaller commented that the minutes from the planning commission meeting brought up comments and requests suggesting that they preferred a vinyl fence because they wanted it to look more residential in nature as opposed to a solid masonry wall. Members of the planning commission also stated that they felt a vinyl fence might be better because the difficulty to maintain a masonry wall. She explained whether right or wrong, there was a lot of discussion at the planning commission meeting regarding the vinyl fence at that meeting.

Joyce McStotts stated the variance request form is not complete and the question asking for special circumstances that are associated with the property has not been answered. She questioned how the applicant feels that they meet the five required criteria for granting a variance. Mr. Clark responded that the residents in this area feel it would be a better situation. Mr. Clark stated he has been in this area for many years and these issues are a sore subject with the neighbors but, he has been able to maintain a very good relationship with the neighbors over the last 10 years and they have his personal phone number if there are any problems. He

stated that the residents are the ones who suggested the vinyl fence and that time he didn't care what type of fence he needed to install. He stated that the cost between a vinyl fence and a solid masonry fence is not that much and he did not care either way. He stated that it is difficult to maintain a masonry wall because of the graffiti situation.

Wendell Coombs made a motion to grant the variance as requested. He stated that there are special circumstances associated with the property which are that the applicant received approval from the planning commission for the vinyl fence, and the planning commissioner knows what the ordinances are, and there must have been reasons that the commission made that determination that the vinyl fence would be adequate. He suggested that the staff take back to the planning commission to revisit whether the city is continue with masonry fences or if there could be other options available to commercial properties that abut residential properties. He stated that the city may need to be more sensitive to a neighborhood's look and feel. He agreed that graffiti has taken over many masonry walls and he rides Trax each day to work and the corridor between the Murray Central Station and the Murray North Station has numerous walls with graffiti. He stated that finances are not the hardship, and meeting the needs of the neighborhood is more important than the standard of requiring a solid masonry wall and it would provide enjoyment of the property. He stated that the fact that the board granted a variance previously for the Larry Miller property does not have bearing on this request, but the look and feel of a neighborhood is important and each request is reviewed on its own merit. He stated he would like to see trees planted along the landscaping strip that may take away the starkness of the fence and would make it more appealing. He stated that approving a vinyl fence on this property would not substantially affect the general plan and would not be contrary to the public interest and would, in fact, support the public interest. There would still be a buffer between the property and the ordinance would provide substantial justice for the neighborhood and property owner. The motion was seconded by Joyce McStotts.

Call vote recorded by Ray Christensen.

<u>A</u>	Mr. Coombs
<u>A</u>	Ms. Haidenthaller
<u>N</u>	Ms. McStotts

Motion passed 2-1.

Mr. Clark stated that they will plant trees in the landscaping area to help soften the affect of a solid vinyl fence.

Joyce McStotts complimented Mr. Clark on his efforts to improve this area.

REVIEW FOR POLICIES AND PROCEDURES UPDATE

Tim Tingey reviewed the draft of Policies and Procedures for the Board and asked that the Board members review the proposed changes and requested a decision on the proposed draft at a future date. He stated that Policies & Procedures help the Board outline the duties and how the meetings should be conducted. He stated it is important for any organization in any community to have defined policies and procedures on how to address issues. He stated that it is important to have a good image on how the meetings are conducted.

Mr. Tingey reviewed the basic proposed changes, one being election of Chair and Vice-Chair to be held on the second Monday of the new year. If the Chair and Vice-Chair are absent from a meeting, the longest service board member would be the chair.

Mr. Coombs stated that typically the Vice-Chair moves into the Chair at the beginning of the new year. Mr. Tingey stated that could be the process, but recommended that a vote be taken for chair and vice-chair.

Rosi Haidenthaller stated if board members know ahead of time that they will not be able to attend a meeting, that the member notify the office in case the meeting date may need to be rescheduled. Mr. Tingey stated that potential changes in meeting dates is addressed in the policies and procedures.

Mr. Tingey reviewed the order of business and the order of business could be modified with consultation of the chair and Community & Economic Development staff. He stated that these Policies & Procedures follow the basic "Roberts Rules of Order" and there needs to be an outline and order of meeting procedure and helps with staff support and transcription of minutes. He stated that there should be "Findings of Fact" adopted by both the Planning Commission and Board of Adjustment which would then be placed in each application file. This outlines the reasoning for why a decision is made by a board/commission. Staff will prepare the "Findings of Fact" which outlines the elements of the meeting that occurred, that there was public comment, that there a number of things that occurred during the meeting and the reasoning why a decision was made. That Findings of Fact would be brought to the subsequent meeting for signature by the Chair which then formally adopts the Findings. This helps in the case of potential law suits, court review, etc.

Mr. Tingey asked the board members to review the proposed Policies & Procedures and at the next meeting a decision could possibly be made for adoption or modification of this document. This will help the meetings to run smoother and more efficient and will help the Board to make easier and better decisions and makes the file more complete and accurate.

Rosi Haidenthaller stated that she hopes that there will be a meeting wherein all five Board members are present and then they will have reviewed the Policies & Procedures and are able to discuss it.

Mr. Tingey reminded the Board members of the training meeting scheduled for October 30th at 6:30 p.m. for both the Board of Adjustment and Planning Commission members.

Meeting adjourned.

Ray Christensen
Senior Planner